

DISTRICT COURT, WATER DIVISION NO. 7, COLORADO 1060 East 2 nd Avenue Durango, Colorado 81301	<div style="text-align: center;"> </div> <div style="text-align: center;"> FILED Document DUCO In Re: Dolores County District Court 6th JD Filing Date: <u>Jun 28 2010</u> 9:29AM MDT Filing ID: 31857368 Review Clerk: N/A </div>
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE TOWN OF RICO IN DOLORES COUNTY	<div style="text-align: center;"> Δ COURT USE ONLY Δ </div> Case Number: 06CW110
<div style="text-align: center;"> FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE AND JUDGMENT AND DECREE </div>	

This matter came on for consideration upon the application of the Town of Rico for a change of water right and new underground water rights. Applicant has agreed to withdraw the claim for change of water rights. The Referee, having considered the pleadings, the evidence presented, the stipulations of the parties and the comments of the Division Engineer, hereby enters the following Findings of Fact, Conclusions of Law and Ruling:

FINDINGS OF FACT

1. Jurisdiction: The application was filed with the Water Clerk, Water Division No. 7 on December 28, 2006. All notices required by law of the filing of the application have been fulfilled and the Court has jurisdiction over the subject matter of this proceeding and over all parties affected thereby, whether they have appeared or not. The land and water rights involved in the application are not within the boundaries of a designated groundwater basin. The matter was re-referred to the Water Judge by Order dated March 9, 2007.
2. Opposition: Statements of opposition to the application were filed by the Colorado Water Conservation Board and the United States of America. No other statements of opposition have been filed and the time for filing such statements has expired. Pursuant to stipulations, all opposers have consented to entry of this ruling.
3. Applicant: The name and address of the applicant are: Town of Rico, P.O. Box 9, Rico, Colorado 81332.
4. Name of wells and permit, registration or denial numbers: North Rico Well Field, which will consist of wells located in an area described as follows and as shown on Exhibit A attached hereto and made a part hereof: E1/2 of the SW1/4 of Section 13 and the NE1/4 of the NW1/4 of Section 24, Township 40 North, Range 11 West of the N.M.P.M. Applicant has cooperated with the Dolores Water Conservation District ("DWCD") to

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drill two test wells in the area. Applicant intended initially to use one of those test wells as a production well pursuant to the water rights claimed in the application in this case. However, if the existing wells do not qualify for permitting as production wells, the applicant would construct a new well or wells in the proposed well field. The existing monitoring wells are located as follows:

- a. Well No. 1 is located in the SW1/4 SW1/4 of Section 13, Township 40 North, Range 11 West of the N.M.P.M. at a point approximately 920 feet from the south section line and 610 feet from the west section line of said Section 13.
 - b. Well No. 2 is located in the SW1/4 SW1/4 of Section 13, Township 40 North, Range 11 West of the N.M.P.M. at a point approximately 1,120 feet from the south section line and 750 feet from the west section line of said Section 13.
5. Source of water: Groundwater tributary to the East Fork of the Dolores River.
 6. Depth of wells: Up to 800 feet. The initial test wells described in paragraph 4 above were completed to depths of approximately 143 feet (Well No. 1) and 152 feet (Well No. 2).
 7. Appropriation date:
 - a. Date of initiation of appropriation: February 1, 1996.
 - b. How appropriation was initiated: Formation of intent by the Town Board of the Town of Rico, authorization by Town Board for the filing of this application and preparation of a report entitled "Town of Rico Water Supply Project, Engineering Report, February, 1996" prepared by Harris Water Engineering, Inc.
 8. Amount claimed: Although the application originally claimed conditional groundwater rights of up to 3.0 cfs for the well field, applicant has agreed to reduce its claim to 0.178 cfs (80 gpm), conditional. The combined diversion by all wells in the well field shall not exceed 0.178 cfs under the conditional water rights awarded in this decree.
 9. Use. Municipal and industrial, including domestic, commercial, irrigation and recreational uses. The water will be used by the Town of Rico to provide water for domestic, residential, commercial, industrial, irrigation, lawn and landscape watering, recreational uses and any other municipal uses in and around the Town of Rico.
 10. Elements of applicant's claim for a conditional water right. The applicant has established that water is available for appropriation under the conditional water rights claimed in the application, that applicant's appropriation and use of water as claimed in the application

is feasible and that water can and will be diverted under the claimed conditional water rights and will be beneficially used with diligence and within a reasonable time.

11. Augmentation. Under current policies of the State Engineer a well that is completed in the alluvium of a river within 100 feet of the surface channel of that river may be considered by State water officials to be so immediately connected to the surface flow of the river that the well may be administered in priority as if it were a surface diversion and, therefore, permitted and approved for use without an augmentation plan. Such a well is commonly referred to as a "headgate well." If applicant constructs a well within 100 feet of the surface channel of the Dolores River and that well otherwise qualifies as a "headgate well," such well could be administered in priority as a surface water right. Applicant acknowledges that, unless a well qualifies as a "headgate well," any well constructed and used for the purpose of developing the conditional water rights awarded in this decree must be operated pursuant to a plan for augmentation in order to replace out-of-priority delayed depletions from the well that would otherwise cause injury to vested and decreed conditional water rights of others. This decree does not adjudicate a plan for augmentation. If the wells need to be augmented, the wells will be augmented under Case No. 95CW104. Applicant has provided evidence that a well or wells constructed within the North Rico Well Field as described above may operate pursuant to the decreed augmentation plan of the DWCD in Case No. 95CW104, which evidence includes a Water Agreement executed February 9, 2006 between applicant Town of Rico and the DWCD (Exhibit B to this decree), a resolution of the Board of Directors dated November 13, 2009 (Exhibit C to this decree) and an order entered August 14, 2006 in Case No. 95CW104 (of which the Court takes judicial notice). The Court finds that, so long as the pumping of the wells is operated pursuant to this decree, including limiting the combined well pumping rate to 0.178 cfs and if these wells will be operated under the 95CW104 augmentation plan and stipulation with the CWCB, no subsequent injury will result to the vested and decreed conditional water rights of others because the effects to the CWCB instream flow water rights from such pumping are within the terms of the stipulation between the DWCD and the CWCB in Case No. 95CW104, whereby the CWCB agreed to a depletion allowance, which the Court approved and which is *res judicata* pursuant to the decree and stipulation in Case No. 95CW104. The Court finds that there are senior water rights located downstream of the Town of Rico on the East Fork of the Dolores River and that the DWCD currently has no source of augmentation water in its 95CW104 augmentation plan capable of delivering replacement water upstream of such senior water rights. However, such senior water rights have historically, even in the worst drought on record, been fully satisfied without placing an administrative call on the East Fork and there is no indication a call may be placed in the future. The water rights that have placed a call historically are located below the confluence of the East Fork and West Fork of the Dolores River. The Division Engineer has asserted that well pumping under this decree may be subject to administration under the priority system in the event of an administrative call in the future for the benefit of

senior water rights on the East Fork, and the DWCD asserts that the location and amount of the calling right, as well as the *res judicata* effect of the decree in Case 95CW104 must be considered in any such administration. For the purpose of this decree, it is sufficient to acknowledge that curtailment of pumping under the groundwater rights awarded in this decree may be required in the case of a valid call from such senior water rights without a substitute water supply plan, future augmentation plan or additional source of augmentation water under the 95CW104 plan.

12. Return Flows. In Case No. 95CW104, the DWCD and the CWCB stipulated to a depletion allowance described in paragraph 8.F. of the 95CW104 augmentation plan decree. Parties agree that the amount of depletions caused by Applicant's well(s) decreed herein that occur within the CWCB instream flow reach of the Dolores River decreed in Case No. 84CW284 shall be considered to be the full diversion rate of the well(s). However, downstream of this instream flow reach, below the confluence with Fill Gulch, only the consumptive use (15% of diversions according to reasonable estimates by Rico's consulting engineer and generally accepted standards) will count against the DWCD depletion allowance described in Paragraph 8.F. of the 95CW104 decree (see DWCD Board Resolution, **Exhibit C**).

CONCLUSIONS OF LAW

13. Notice and jurisdiction: All notices required by law have been properly made, including as required under § 37-92-302(3), C.R.S. The Court has jurisdiction over the application and over all persons or entities that may be affected by the application, whether they have appeared or not.
14. Conditional rights. Applicant has fulfilled all legal requirements for a decree confirming the claimed conditional groundwater rights, including §§ 37-92-302 and 37-92-305, C.R.S.

RULING OF THE REFEREE

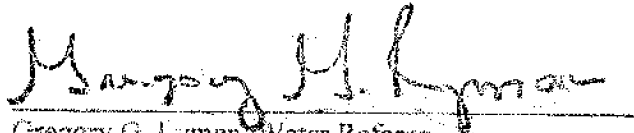
15. The foregoing findings of fact and conclusions of law are hereby incorporated into this ruling and decree.
16. The Court hereby confirms and decrees conditional water rights for the North Rico Well Field in the amount of 0.178 cfs as described in the findings of fact above.
17. The claim for a change of water right for the Original Rico Flume, as claimed in the application, pursuant to stipulations with the opposers, is hereby dismissed without prejudice.

18. Applicant shall install, maintain and operate appropriate measuring devices, including totalizing flow meters on any wells, and provide written accounting reports at least annually to the Division Engineer as may be reasonably required by the Division Engineer for diversion and use of water from the North Rico Well Field under the conditional water rights decreed herein.
19. The priority awarded herein to the conditional ground water rights in the North Rico Well Field was filed in the Water Court in 2006 and shall be administered as having been filed in that year, and shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priority shall be determined by historical dates of appropriation and not affected by the date of entry of ruling.
20. Prior to operating wells in the North Rico Well Field, applicant must give notice to the Division Engineer that the well or wells shall be operated pursuant to the plan for augmentation of the DWCD in Case No. 95CW104 and applicant shall maintain its standing as a beneficiary of said plan for augmentation, including compliance with the applicable rules, regulations and policies of the DWCD in the operation of said plan for augmentation. If applicant does not maintain the well(s) in good standing under the DWCD augmentation plan in Case No. 95CW104, applicant must either demonstrate that the well(s) qualify as a "headgate well" as described in paragraph 11 and agree that they shall be administered in priority, or applicant shall adjudicate a separate plan for augmentation or include the well(s) in an approved temporary substitute water supply plan before diverting and using water from any well under the conditional water rights awarded in this ruling and decree.
21. Prior to using either of the two existing test wells as production wells or constructing new wells in the North Rico Well Field, Applicant shall apply for and obtain well permit(s) pursuant to §37-92-137 (2), C.R.S. Upon application for a well permit consistent with the terms this decree, the State Engineer shall issue such permit subject to the reasonable rules, regulations and policies of the State Engineer and in accordance with the provisions this decree.
22. This decree describes water diversion and/or conveyance facilities to be located on federal lands managed by the United States Department of Agriculture ("USDA") Forest Service. Rico acknowledges that entry of a decree in this matter does not create any right, title or interest in the use of federal lands. Any use of federal land is contingent on and subject to Rico having or obtaining appropriate authorization issued by the USDA Forest Service pursuant to pertinent statutes, regulations and policies applicable to the occupancy and use of the federal public lands. Rico recognizes and acknowledges that the consideration and action on requests for necessary federal permits and authorizations shall be carried out pursuant to all pertinent statutes, regulations and policies applicable to the occupancy and use of the involved federal public lands, including, but not limited

to the National Forest Management Act, Federal Land Policy and Management Act, National Environmental Policy Act, and the Endangered Species Act. Rico agrees and acknowledges that the entry of the decree herein shall not in any way limit the authority of the USDA Forest Service with respect to the agency's consideration of and action on such requests for permits, approvals, or authorizations. Rico recognizes that the USDA Forest Service can impose terms and conditions on and/or deny such requested contracts, approvals, or authorizations, and is not in any way limited or affected by the entry of the requested conditional water rights decree.


23. This decree is entered into by way of compromise and settlement of this litigation and any agreement by the CWCB not to oppose entry of said proposed decree shall not be construed as concurrence with any specific finding of fact or conclusions of law contained therein or with the specific engineering methodologies or administrative practices utilized by Applicant other than for purposes of settlement of this matter. This decree is *res judicata* with respect to the well depletions allowed herein by CWCB as a result of CWCB's agreement with DWCD in Case No. 95CW104. CWCB's consent to this decree and recognition of the binding effect of the stipulation in Case No. 95CW104 shall not result in, nor shall any part of this decree be administered as a general subordination of the CWCB's instream flow right decreed in Case No. 84CW284 to any other water rights junior to that instream flow water right.
24. Upon the sale or other transfer of any conditional water right contained herein, the transferee shall file with the Water Court having jurisdiction a notice of transfer which shall state: (1) the title and case number of the case in which the conditional decree was issued, (2) the description of the conditional water right transferred, (3) the name of the transferor, (4) the name and mailing address of the transferee, and (5) a copy of the recorded deed or other transfer document. The owner of any conditional water right shall notify the Clerk of the Water Court having jurisdiction of any change in mailing address.
25. The conditional groundwater rights awarded in this decree are hereby continued in full force and effect until June, 2016. If the applicant or its successor desires to maintain the conditional water rights herein, an application for finding of reasonable diligence shall be filed on or before June, 2016, or a showing made on or before such date that the conditional water rights have been made absolute by reason of the completion of the appropriation.
26. It is further ordered that a copy of this ruling and decree shall be filed with the State Engineer and the Division Engineer for Water Division No. 7.

Dated this 25th day of May, 2010.



Gregory G. Lyman, Water Referee
Water Division No. 7

Approved as to substance and form:

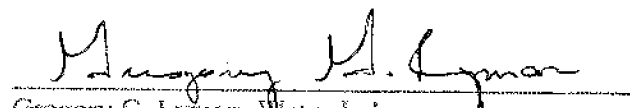
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Rego Leach, Division Engineer
Water Division No. 7

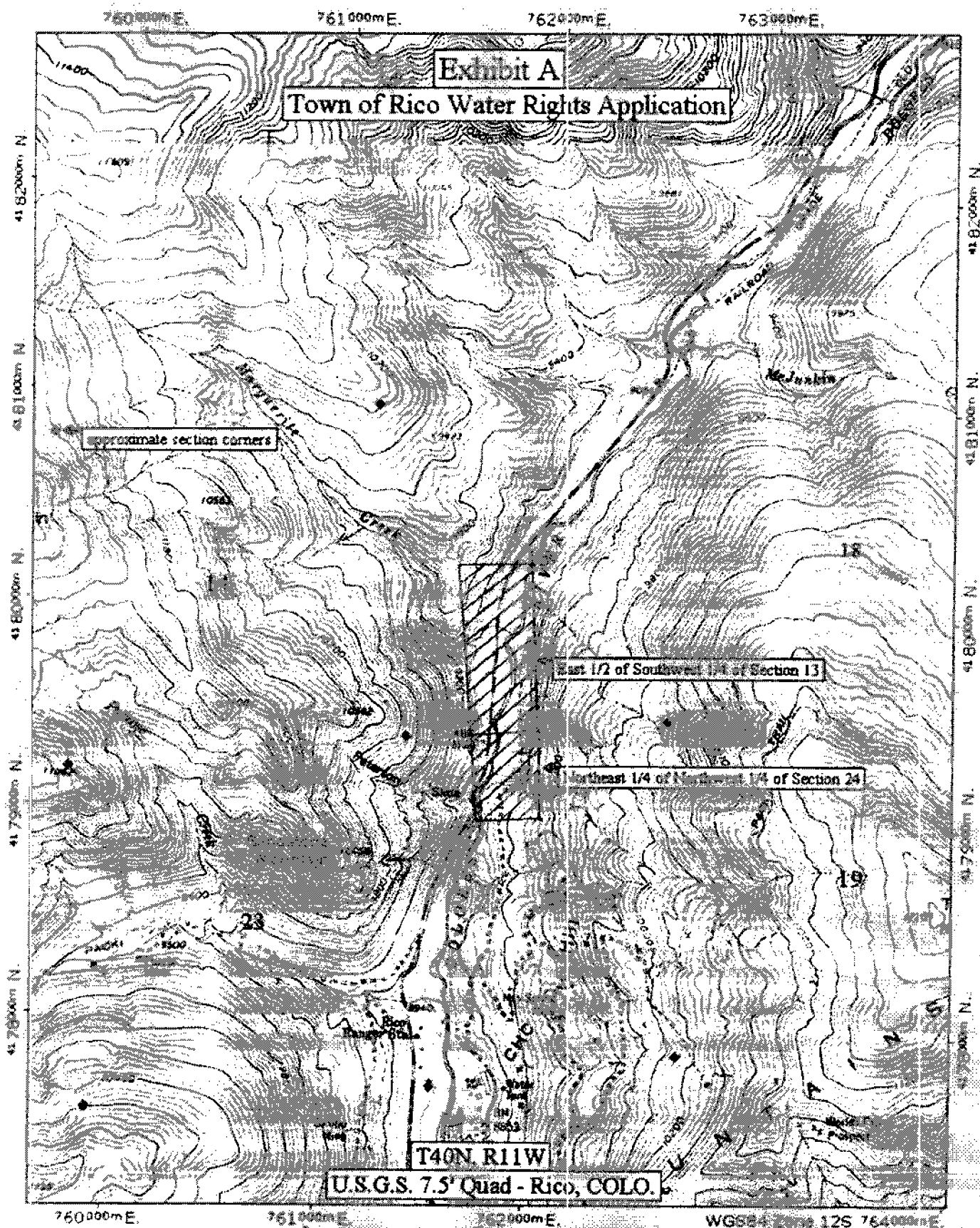
THE COURT DOETH FIND: NO PROTEST WAS FILED IN THIS MATTER.
THE FOREGOING RULING OF THE REFEREE IS CONFIRMED AND APPROVED AND
IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: June 28, 2010

BY THE COURT:



Gregory G. Lyman, Water Judge
Water Division No. 7
State of Colorado



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WATER AGREEMENT

THIS AGREEMENT is executed by the **DOLORES WATER CONSERVANCY DISTRICT**, a Colorado quasi-municipal Corporation established under C.R.S. §37-45-101, *et seq.*, 60 South Cactus Street, Cortez, CO 81321 (the "District") and the **TOWN OF RICO**, P.O. Box 56, Rico, CO 81332 ("Rico").

RECITALS

- A. The District is the operator of the Dolores Project, constructed by the U.S. Bureau of Reclamation, including McPhee Reservoir on the Dolores River, and is the owner of the Project's water rights, including water rights with an appropriation date of September 10, 1940, decreed in Case 967 for water in McPhee Reservoir.
- B. The Rico Water System is supplied by the following water right: 0.28 c.f.s. absolute and 2.72 c.f.s. conditional decreed in Case 2220, with an appropriation date of July 2, 1936 ("Rico Supply"). Rico's Supply is junior to the District's water rights.
- C. The District, pursuant to a U.S. Forest Service ("USFS") permit, drilled test wells into the Dolores River at the north Rico alluvium (the "North Rico Alluvium"), 2.25 miles north of Rico, as described in Rico Alluvium Development Concept Report, dated December 2, 2003, as a potential physical source of water for a District plan for augmentation. The District has invested over \$50,000 in geotechnical work to establish the potential for water storage in the North Rico Alluvium. The Town has invested \$10,000.00 with the District to participate in the well drilling into the North Rico Alluvium and has invested \$3,000.00 to test the North Rico Alluvium as a potential drinking water source.
- D. Under the Upstream Water Users Agreement ("Upstream Agreement"), executed by the District and water users on the Dolores River above McPhee Reservoir, designed to generally maintain the pre-Dolores Project flow regime and to avoid a call by Montezuma Valley Irrigation Company ("MVIC") of its priority 17 (aka Priority 16) water right ("MVIC Right"), 1) Upstream Water Users are: (1) allowed their historic diversions, but they are not allowed to expand their historic consumptive use ("HCU") and, 2) required to include their land within the District because C.R.S. §37-45-101, *et seq.* requires all water conservancy districts to provide water only within the boundaries of the district.
- E. Rico, an upstream Dolores River diverter, is not a party to an Upstream Water Users Agreement and land within Rico is not yet included within the District.
- F. The District and Rico wish to agree on the terms and conditions to assure District forbearance from placing a call on Rico's Supply, in lieu of Rico executing the Upstream Agreement.

NOW, THEREFORE, in consideration of the terms and conditions set forth below, the District and Rico agree as follows:

1. The District shall forbear from exercising a call on Rico's Supply and shall seek to prevent an MVIC call of its MVIC Right pursuant to Paragraph 2 herein as long as:

a. Rico petitions, simultaneously with the execution of this Agreement, on a form substantially similar to that attached as Exhibit "A," and made a part hereof, to have included within the District the land on which the intake structure for Rico's Supply and the land on which Rico's

water treatment plant are located;

b. Rico purchases municipal and industrial ("M&I") water from the District as described in Paragraph 3 below;

c. Rico diligently pursues the process of including the entire area within Rico's municipal boundaries in the District ("Rico Area"), as set forth in C.R.S. §37-45-136(3) or §37-45-136(3.5). Rico shall petition the District Court, Montezuma County, for inclusion of the Rico Area within the District pursuant to C.R.S. §37-45-136(3) within three months of the execution of this Agreement.

2. Rico inclusion under Case No. 95CW104.

a. Until the Rico Area has been included within the District, the District will treat Rico as a participant in Case No. 95CW104, forbear from placing a call on the Rico Supply and seek to prevent an MVIC call of its Priority 17[16] water right by making deliveries of McPhee Reservoir water to MVIC. Rico acknowledges Rico may need to apply for a temporary substitute supply plan annually prior to Rico's official inclusion both within the District and under Case No. 95CW104.

b. Once the Rico Area is included within the District, the District has the option to take formal action to have Rico become a participant in Case No. 95CW104, with Rico to comply with District policy with regard to inclusion of property under Case No. 95CW104.

3. Rico's purchase of District M&I water.

a. Rico will purchase annually enough District M&I water to make up for the depletions from the use of water from the Rico Water System. At this time, Rico shall purchase 15 AF per year for the Rico Water System taps. This number is an estimate only, agreed upon by Rico and the District to resolve this issue temporarily.

b. Each year, by February 28, Rico shall report to the District concerning the water use of the Rico Water System for the preceding year and the number and type of taps added to the Rico System within Rico. If Rico seeks to provide municipal water to land outside Rico, Rico shall immediately provide written notice to the District, together with petitions for the inclusion into the District of the land to be served by these new outside Rico taps.

c. The District, in consultation with Rico, shall determine the depletions for water use for the coming year, given the new taps, and Rico shall purchase sufficient M&I water from the District to cover the total depletions from the Rico Water System.

d. Rico shall provide written notification to the District concerning the proposed annexation of land into Rico, allowing the District the same comment privileges as schools and other districts, and Rico shall enter into discussions and any necessary agreements with the District to ensure the appropriate District taxation of the land to be annexed.

4. Payment for Water.

a. Upon execution of this Agreement, if not previously paid, Rico shall pay the District a nonrefundable application fee pursuant to District policy of Two Hundred Dollars (\$200.00), together with the 2004 annual charges described in paragraph 4(b)(i)-(ii) below.

b. Rico shall pay the District annually, as set by the District Board, in advance for M&I Water, within thirty (30) days of billing by the District, whether or not Rico actually utilizes such water, as follows:

- i. A fee per acre-foot ("AF"). The present fee is \$106.67/AF.
- ii. An annual operation, maintenance, replacement ("OM&R") fee and other charges and expenses for the amount of water diverted by Rico under Rico's Supply. This charge will vary annually.
- c. If the charges for Rico's District M&I water provided for in this Agreement are not timely paid as billed:
 - i. Purchaser's unpaid balance shall accumulate interest at the rate of one and one-half percent (1 1/2 %) per month;
 - ii. the District may notify the Water Commissioner of the Dolores River and the Division Engineer, Water District 7, of the non-payment of charges and place a call on Rico's Supply.
- d. The payments provided for herein shall not be reduced because of a shortage of water in the Dolores Project, and, to the extent allowed by law, no liability shall accrue against the District or its officers, agents or employees and members of the Board of Directors (together "DWCD") as a result thereof.

5. North Rico Alluvium. The parties acknowledge Rico's desire to change the point of diversion ("POD") of Rico's Supply, the source for the Rico Water System to the Dolores River at or near the North Rico Alluvium and the District's desire to obtain a decree for an augmentation plan ("B/A Plan") utilizing the North Rico Alluvium as the augmentation source. Each party desires to cooperate with the other to seek to obtain both of these goals. The District, however, reserves its right to object to an application by Rico to change the point of diversion of the Rico Supply to the North Rico Alluvium and Rico reserves the right to object to the District's Plan application, except that Rico shall not object to the Plan application if Rico is a beneficiary of the Plan. Rico acknowledges that if Rico seeks a change in the POD of Rico's Supply to the Dolores River, Rico may have independent depletion issues with the Colorado Water Conservation Board.

6. Agreement Termination.

a. Unless Rico petitions the District Court, Montezuma County, for inclusion of the Rico Area within the District within three months after the execution of this Agreement, the District may elect to terminate this Agreement by providing forty-five (45) days prior written notice to Rico.

b. Unless the Rico Area is included in the District within three (3) years from the date of this Agreement, the District may elect to terminate this Agreement by providing forty-five (45) days prior written notice to Rico.

7. Dispute Resolution. This Agreement shall be governed by the laws of the State of Colorado. In the event of litigation arising from the interpretation or the enforcement of any of the terms or provisions of this Agreement, the parties hereto agree that jurisdiction and venue for such litigation shall be in the District Court, Montezuma County, Colorado.

8. Notices. Any notices required or desired hereunder shall be in writing and delivered or sent postage prepaid by certified or registered mail, return receipt requested, or by fax to the parties at their addresses set forth above (or such other addresses as the parties may otherwise designate in writing). The date of delivery, mailing or fax shall be deemed to constitute the date of any such notice.

9. Severability of Provisions. Should any provision herein be found or deemed to be invalid, this Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

10. Construction Generally. This Agreement shall be interpreted and construed in a fair manner without regard to the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party.

11. No Waiver. The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

12. Total Agreement. There are no understandings or agreements between the parties except as herein expressly stated.

13. Other Documents. Each of the parties agrees to sign such other and further documents as may be appropriate to carry out the intentions expressed in this Agreement.

14. Amendments and Modifications. No provision of this Agreement may be amended or modified in any way except by the written agreement of the parties.

15. Counterparts and Faxed Signatures.

a. Counterparts. This Agreement may be signed in counterparts, each to serve as an original document.

b. Faxed Signatures. In the execution of this Agreement, faxed signatures of the parties to this Agreement shall be considered original signatures. A party executing this Agreement with a faxed signature shall promptly provide the other parties to this Agreement with an original signature.

DOLORES WATER CONSERVANCY DISTRICT

Date: 2-9-2006

By:

Donald W. Schwandt
Donald W. Schwandt
President, Board of Directors

ATTEST:

Billy F. Smart
Billy F. Smart, Secretary

TOWN OF RICO

Date: FEB. 8, 2006

By: Rebecca Elison
Print
Name: R. Elison
Title: Mayor

ATTEST:

LINDA YELLOIDMAN
Print
Name: Linda Yelloidman
Title: TOWN CLERK - TREASURER

EXHIBIT C

Resolution 09-02
RESOLUTION OF THE BOARD OF DIRECTORS
Dolores Water Conservancy District

Rico Water Supply Development and Augmentation

Whereas, In accordance with the terms of the February 2006 Water Agreement between DWCD and the Town of Rico, the DWCD Board approved inclusion of Rico in the DWCD boundaries and the Water Court issued an order dated August 11, 2006 confirming water use on "all property within the Town of Rico" as authorized diversions under the DWCD augmentation plan decreed in Case No. 95CW104.

Whereas, The Board understands that Rico has proposed to divert up to 0.178 cfs at the proposed Rico alluvial wells (described in the Water Agreement), which diversions would be out-of-priority as to the 20 cfs CWCB instream flow water right in the segment of the Dolores River upstream of Fill Creek.

Whereas, The Board also acknowledges that the CWCB takes the position that 100% of Rico's well diversions must be accounted against the 0.20 cfs *de minimis* allowance under the 95CW104 decree in the instream flow segment between the Town of Rico and the confluence with Fill Creek.

Therefore Be it Resolved that, The Board finds that the allocation of 0.178 cfs of the *de minimis* allowance to Rico's well depletions in that river segment is consistent with the 2006 Water Agreement and the DWCD decree in 95CW104 and that inclusion of the Rico well(s) up to a diversion rate of 0.178 cfs in the DWCD augmentation plan should be approved upon proper application for well permit(s) and referral of such application(s) to DWCD in accordance with the usual procedures for administration of wells under the 95CW104 decree.

Be it Further Resolved, Such approval is subject to the CWCB agreeing that only the actual depletions of approximately 0.022 cfs from the 0.178 cfs is to be accounted against the *de minimis* allowance in the instream flow water right segment downstream of Fill Creek.

This resolution was adopted at a regular meeting of the Board of Directors of the Dolores Water Conservancy District on November 12, 2009, by a vote of 5 to 0.

DOLORES WATER CONSERVANCY DISTRICT

By: Joe Mahaffey for

Joe Mahaffey, President

ATTEST:

Bruce Smart

Bruce Smart, Secretary